IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.1019 OF 2005
IN
NOTICE OF MOTION NO.1887 OF 2003
IN
SUIT NO.1938 OF 2003

Ajay Kumar Garg & anr. .. Appellants

v/s.

Anita Sanjeev Malhotra Nee
Ghaswala & ors. .. Respondents

Mr.Shailesh Shah with Mr.P.N.Gangwani i/by M/s.Mayur Narendra & Co. for the appellants.

Mr.D.D.Madon, Senior Counsel with Mr.H.N.Thakore & Ms.Agnes Bharadia i/by M/s.Thakore Jariwalla for the respondents.

CORAM : R.M.LODHA AND
P.V.KAKADE, JJ.

DATED : 2nd December, 2005

P.C.

Heard.

2. Admit.

3. The advocate on record for the respondent No.1 waives service. As regards respondent Nos.2 and 3, we are informed that the said respondents are not required to be heard for disposal of the appeal.

3. By consent of the learned counsel for the appellant and the learned Senior Counsel for the respondent No.1, we dispose of the appeal finally at this stage.

4. The present respondent No.1 (original

plaintiff) was the tenant in the 2nd floor (West side front side flat) of the property known as Guzdar House, situate at Bhulabhai Desai Road, Mumbai. An agreement is said to be entered into between the plaintiff and the present appellants (original defendant Nos.1 and 3). The agreement related to the vacation of the said flat by the plaintiff. In lieu thereof, the defendant Nos.1 and 3 agreed to provide him two flats on a tenancy basis as and by way of alternative accommodation on the 21st floor of the building "Chaitanya Towers", situate at Prabhadevi, Mumbai. In addition thereto, the said defendants were also to pay to the plaintiff a sum of Rs.4,21,00,000/-. It is not in dispute that an amount of Rs.4,01,00,000/- has already been paid to the plaintiff. It appears that the said defendants were not in a position to provide an alternative accommodation to the plaintiff on the 21st floor of "Chaitanya Towers". It is the case of the plaintiff that the said defendants then agreed to give to the plaintiff two flats being C-2204 and C-2304 in the building "Chaitanya Towers" but failed to honour the agreement necessitating the litigation.

5. It is admitted position that pursuant to the aforenoticed agreement, the amount of Rs.4,01,00,000/- has been paid by the defendant Nos.1 and 3 to the plaintiff. It is also admitted position that the plaintiff vacated flat in his occupation on the second floor of Guzdar House and

the said flat is in possession of the defendant Nos.1 and 3. The defendants No.1 and 3 deny having agreed to provide for two flats being C-2204 and C-2304 on the 22nd and 23rd floors of the building "Chaitanya Towers" in lieu of the plaintiff vacating the flat at Guzdar House.

6. That the plaintiff has vacated the west side front side flat on the second floor of Guzdar House and the said flat is in possession of the defendant Nos.1 and 3 persuades us to hold that until the disposal of the suit, interest of justice shall be subserved if the defendant Nos.1 and 3 are restrained from transferring, alienating, disposing of or in any manner creating third party rights or interest in the west side front side flat on the second floor of Guzdar House and that the appointment of the Court e Receiver is not at all necessary.

7. During the course of the arguments,the learned counsel for the appellants (defendant Nos.1 and 3) made the statement before us that the said appellants have no objection if the plaintiff (respondent No.1) removes his furniture lying in the subject flat. Mr.Madon, the learned Senior Counsel for the respondent No.1 submits that within six weeks from today, the respondent No.1 shall remove the furniture and articles set out in Exhibit "B1" (pages 83 and 84 of the paper-book.

8. We, accordingly, allow the appeal in part, set

aside the order of appointment of the Court Receiver in respect of west side front side flat on the second floor of Guzdar House. The defendant Nos.1 and 3 (appellants herein) are restrained from transferring, alienating, disposing of or creating any third party right or interest in the west side front side flat on the second floor of Guzdar House in any manner whatsoever during the pendency of the appeal. The defendant Nos.1 and 3 are also restrained from parting with possession of the suit flat until the disposal of appeal in any manner whatsoever.

9. As agreed to, the respondent No.1 is permitted to remove the furniture and items as set out in list "B1" (pages 83 and 84 of the paper-book) from the suit flat within six weeks from today.

(R.M.LODHA, J.)

(P.V.KAKADE, J.)